No. 93-

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ALVIN T. ADAMS, SR., *et al.*,

Petitioners,

v.

WALTER INDUSTRIES, INC., *et al.*,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether there is a Seventh Amendment right to a jury trial in an action to hold a parent corporation liable for money damages caused by its subsidiary's torts.

2. Whether the courts of appeals remain bound by the rule of *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 472 (1962), that it is "the responsibility of the Federal Courts of Appeals to grant mandamus" to review deprivations of the Seventh Amendment right to jury trial.

PARTIES TO THE PROCEEDING

Petitioners are more than 1,000 tort victims who brought actions for money damages against Walter Industries, Inc., its subsidiaries, or predecessors for personal injuries arising from exposure to asbestos and asbestos-containing products manufactured and sold by The Celotex Corporation. They are identified in Appendix A to this petition (App. 1a). Respondents are Walter Industries (formerly Hillsborough Holdings Corporation) and some 30 corporate subsidiaries or affiliates of Walter Industries. They are identified in Appendix B to this petition. (App. 31a)

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The order of the court of appeals denying the petition for a writ of mandamus (App. 40a) is unreported. The order of the district court denying petitioners' motion to withdraw the reference of this case to the United States Bankruptcy Court for the Middle District of Florida (App. 32a) is unreported. The order of the bankruptcy court striking petitioners' demand for a jury trial (App. 36a) is unreported.

JURISDICTION

The order of the court of appeals denying a writ of mandamus was entered on April 19, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the Constitution provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . . .

STATEMENT

Respondents Walter Industries, Inc., (formerly Hillsborough Holdings Corporation) and some 30 corporate affiliates of Walter Industries, are the debtors in a pending bankruptcy case. They instituted this suit as an adversary proceeding in the United States Bankruptcy Court for the Middle District of Florida. Respondents seek a judgment declaring that their predecessor, Jim Walter Corporation ("JWC"), has no liability for money damages resulting from asbestos products of The Celotex Corporation ("Celotex"), JWC's wholly-owned, and now insolvent, subsidiary.

Petitioners are defendants in the adversary proceeding. They include more than 1,000 individuals who brought suit against Celotex and JWC before respondents' bankruptcy. Those suits sought money damages for bodily injuries sustained as a result of exposure to Celotex's asbestos products.

This petition stems from rulings of the bankruptcy court and the district court that petitioners have no Seventh Amendment right to a jury trial of JWC's liability, and from the failure of the court of appeals to grant mandamus for the vindication of that right in advance of the forthcoming trial.[1]

Respondents' bankruptcy arises from the 1988 acquisition of JWC, a Florida homebuilding and building products conglomerate, by various holding companies created and controlled by Kohlberg Kravis Roberts & Company ("KKR"). KKR financed the acquisition of JWC's stock in large measure by borrowing against JWC's own assets, a transaction commonly referred to as a leveraged buyout or "LBO." Before the 1988 LBO, JWC was a public company which owned more than 30 operating subsidiaries, including Celotex. Celotex manufactured and sold products containing asbestos and, through a subsidiary, mined and sold asbestos. At the time of the LBO, well over 100,000 persons, including petitioners, had unsatisfied claims against Celotex for asbestos-related injuries (the "Asbestos Victims"). In addition, hundreds of Asbestos Victims had joined JWC as a defendant to their personal injury actions against Celotex, claiming that the corporate veil between Celotex and JWC should be pierced. The plaintiffs in those actions against JWC all demanded jury trials.

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[1] Petitioners raised this issue by moving the district court to withdraw the reference to the bankruptcy court, contending that the bankruptcy court lacks constitutional power to conduct a jury trial. As none of the lower courts found it necessary to decide whether the bankruptcy court is empowered to preside over a jury trial, that question is not presented in this petition for certiorari.

As part of the LBO, KKR orchestrated a series of complex corporate maneuvers designed to insulate the assets of JWC from claims by the Asbestos Victims. When the dust settled, all of JWC's operating subsidiaries except Celotex and one other company were owned by KKR through respondents. Celotex and the corporate successor to JWC were transferred to a third party for nominal consideration.

The Asbestos Victims responded to the LBO by adding certain of respondents as defendants in many of the pending personal injury lawsuits against Celotex and JWC, alleging, *inter alia*, that the LBO was a fraudulent conveyance of JWC's assets to respondents. In addition, in January 1989, certain Asbestos Victims filed a class action complaint in the United States District Court for the Eastern District of Texas seeking money damages from, among others, Celotex, JWC and Walter Industries. In that suit, *Cimino, et al. v. Raymark Industries, Inc., et al.*, the plaintiffs asserted that JWC was liable for asbestos injuries caused by Celotex on a theory of piercing the corporate veil. They also alleged that respondent Walter Industries was liable for such injuries because the 1988 LBO was a fraud on the creditors of Celotex and JWC. The *Cimino* plaintiffs demanded a jury trial.

Later in 1989, a second class action was filed in Texas state court by some of the Asbestos Victims. In that suit, *Larned, et al. v. Kohlberg Kravis Roberts & Co., et al.*, the plaintiffs sued Celotex, JWC, certain of respondents, KKR and others associated with the 1988 LBO. As in *Cimino*, the *Larned* plaintiffs asserted that the transfer of JWC's property to respondents was a fraudulent conveyance of assets that should have been available to satisfy the claims

of the Asbestos Victims. The *Larned* plaintiffs sought legal relief in the form of a judgment declaring that the corporate veil between Celotex and JWC was pierced, making JWC liable for money judgments against Celotex; an order recovering the JWC assets transferred to respondents as part of the LBO; and compensatory damages for the value of assets transferred to respondents which had been retransferred to third parties. They also sought various forms of equitable relief including an injunction, an accounting and the appointment of a receiver. The *Larned* plaintiffs demanded a jury trial.

In December 1989, respondents filed for bankruptcy under Chapter 11 of the Bankruptcy Code. The bankruptcy filing had the effect of staying all litigation against respondents Walter Industries and affiliates, including all individual asbestos-related tort suits and the *Cimino* and *Larned* class actions. Several days later, respondents filed this adversary proceeding against, among others, the more than 2,000 individual plaintiffs, including petitioners, who had brought tort actions seeking money damages against respondents for asbestos-related injuries.

Respondents seek a judgment declaring that they are not liable for money damages caused by the asbestos activities of Celotex. As a threshold bar to their own liability as successors to JWC or as transferees of its assets, respondents seek a declaration that "the corporate veil between JWC and Celotex may not be pierced in order to make JWC liable for the asbestos-related liabilities of Celotex."[2] In

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[2] Respondents' complaint also prays for declarations that the 1988 LBO "was not a fraudulent conveyance," that none of

substance, then, respondents demand judgment in favor of JWC on money damage claims asserted against it in over 2,000 personal injury tort suits, the *Cimino* class action, and the *Larned* case. Petitioners answered, denying the allegations of the complaint and made a timely demand for a jury trial.[3]

On September 8, 1992, the bankruptcy court bifurcated this case for trial. The veil-piercing issue will be tried first in December 1993. Other issues, including principally whether the 1988 LBO was a fraud on JWC's creditors, will not be tried until the veil-piercing trial determines whether JWC must respond in damages for the asbestos injuries of Celotex's tort victims. If petitioners prevail on that issue, the fraudulent conveyance claim will be tried thereafter.

Petitioners moved the district court to withdraw the reference of the adversary proceeding to the bankruptcy court on the grounds that they are entitled to a jury trial and that the bankruptcy court lacks the power to conduct a jury trial. On September 15, 1992, the district court denied the motion. (App. 32a). It held that petitioners have no constitutional right to a jury trial on the veil-piercing issue, concluding that such actions were historically brought

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respondents "is the successor in interest to the asbestos-related liabilities of either [JWC] or Celotex," and that respondents are not, in any event, "liable for the asbestos-related liabilities of either JWC or Celotex." None of these additional claims is implicated in this petition.

[3] Petitioners also unsuccessfully moved the bankruptcy court and the district court to abstain from exercising jurisdiction over the adversary proceeding and exhausted their appellate remedies on that question.

in equity and that the relief sought is an equitable "determination to ignore a legal fiction." (App. 34a). Following the district court's decision, the bankruptcy court struck petitioners' jury demand on the veil-piercing issue. (App. 36a).[4]

On February 23, 1993, the district court denied petitioners' motion to certify for interlocutory appeal its September 15, 1992, order denying the motion to withdraw the reference. (App. 38a) Petitioners therefore sought a writ of mandamus from the United States Court of Appeals for the Eleventh Circuit commanding the district court to withdraw the reference of this adversary proceeding to the bankruptcy court and to conduct a jury trial in the district court. On April 19, 1993, the Eleventh Circuit denied the writ in a one-sentence order giving no explanation of the grounds for its ruling. (App. 40a)

REASONS FOR GRANTING THE PETITION

The petition should be granted because, in violation of the Seventh Amendment, the court of appeals has permitted the bankruptcy court to try an action that will determine petitioners' entitlement to money damages without a jury in the face of a timely demand for a jury trial. This Court has long recognized that it is the "responsibility of the Federal Courts of

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[4] The district court also ruled that there is no right to a jury trial on the fraudulent conveyance claim, purporting to distinguish this Court's decision in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 43-46 (1989). The bankruptcy court, however, proceeded to strike the jury demand only as to veil piercing and not as to the fraudulent conveyance issue, which will be tried separately. Accordingly, the lower courts' disposition of petitioners' Seventh Amendment right as to the fraudulent conveyance issue is not presented in this petition for certiorari.

Appeals to grant mandamus" when the lower courts fail to respect a party's constitutional right to trial by jury. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 472 (1962). In light of this clear command, the court of appeals' one-line order denying mandamus was presumably based on its conclusion that petitioners have no Seventh Amendment right to a jury trial on the veil-piercing issue. If so, the decision below is in direct conflict with the decision of the United States Court of Appeals for the Second Circuit in *Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc.*, 933 F.2d 131 (2d Cir. 1991), which recognized a constitutional right to a jury trial in an action seeking to pierce the corporate veil. The Eleventh Circuit's decision is also manifestly incorrect under this Court's jury trial analysis as set forth in such decisions as *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558 (1990) and *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33. This Court should grant certiorari to resolve the apparent conflict between the Second and Eleventh Circuits on the availability of a jury trial in damage actions that present the issue of piercing the corporate veil.

It is possible that the Eleventh Circuit denied mandamus on one of the alternative (and equally erroneous) grounds urged by respondents below. Relying on the Seventh Circuit's decision in *First National Bank of Waukesha v. Warren*, 796 F.2d 999 (7th Cir. 1986), respondents argued 1) that mandamus is an inappropriate means of reviewing denial of a jury trial; and 2) that mandamus should be denied because petitioners failed to show a "clear and indisputable" right to a jury trial. If the Eleventh Circuit based its decision on either of these grounds, it placed itself

in conflict with many other circuits. At least eight circuits have recognized that mandamus is the appropriate means to review denial of the right to jury trial, as this Court expressly held in *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959), *Dairy Queen, supra*, and *Ex Parte Simons*, 247 U.S. 231 (1918). Similarly, when the issue presented on mandamus is the Seventh Amendment right to jury trial, at least three circuits have read *Beacon Theatres* and *Dairy Queen* as rejecting the "clear and indisputable" right standard applicable in other mandamus cases. In short, if the Eleventh Circuit denied mandamus on either procedural basis asserted by respondents in opposing the petition below, its decision squarely conflicts with decisions of other circuits and of this Court, itself. The conflicts presented touch on vital issues in the administration of justice and can only be resolved by certiorari.

1.a. If the Eleventh Circuit's denial of mandamus rested on a determination that petitioners have no constitutional right to a jury trial, its decision cannot be reconciled with the Second Circuit's decision in *Wm. Passalacqua*. In that case, the Second Circuit held that the Seventh Amendment guarantees the right to a jury trial in an action seeking to hold shareholders liable for a money judgment against a corporation. 933 F.2d at 136-37. The plaintiffs had obtained a judgment for breach of contract against the corporation. Unable to satisfy their claim from the assets of the corporation, the plaintiffs sued the shareholders and other corporations under common control for the uncollected balance of the judgment debt. The district court submitted the issue whether the shareholders were liable for the judgment against

the corporation to a jury over the defendants' objection. *Id.* at 134. On appeal, the Second Circuit applied the analytical framework laid down by this Court in *Granfinanciera, S.A. v. Nordberg*, 492 U.S. at 42. The court of appeals first concluded that the theory of shareholder liability in such an action, variously referred to as "piercing the corporate veil," "alter ego" or "corporate disregard," has both legal and equitable roots in 18th-century English practice. 933 F.2d at 136. The court next looked to the remedy sought—collection of a money judgment—and found it to be of a kind "typically achieved in an action at law." *Id.* Because the historical roots of the claim were not exclusively equitable, and because the remedy sought was legal, the Second Circuit concluded that the Seventh Amendment guaranteed the right to a jury trial. *Id.*[5]

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[5] Without discussing the point explicitly, many other courts have submitted veil-piercing disputes to juries, evidently on the assumption that the Seventh Amendment so requires. *E.g.*, *Pan Eastern Exploration Co. v. Hufo Oils*, 855 F.2d 1106, 1133 (5th Cir. 1988); *American Protein Corp. v. A.B. Volvo*, 844 F.2d 56, 59 (2d Cir.), *cert. denied*, 488 U.S. 852 (1988); *Mackey v. Burke*, 751 F.2d 322, 326-27 (10th Cir. 1984); *Walter E. Heller & Co. v. Video Innovations, Inc.*, 730 F.2d 50, 53 (2d Cir. 1984); *FMC Finance Corp. v. Murphree*, 632 F.2d 413, 421 & n.5 (5th Cir. 1980); *Luckett v. Bethlehem Steel Corp.*, 618 F.2d 1373, 1379 (10th Cir. 1980); *Delchamps, Inc. v. Borkin*, 429 F.2d 417, 419 (5th Cir. 1970); *Continental Casualty Co. v. United States*, 308 F.2d 846, 848 (5th Cir. 1962); *Cantiere DiPortovenere Piesse S.p.A. v. Kerwin*, 739 F. Supp. 231, 236 (E.D. Pa. 1990). *See also* L. Wormser, *Disregard of the Corporate Fiction and Allied Corporation Problems* 84 (1927). There is no denying that courts now unhesitatingly hold jury trials to find the facts where money damages are sought from a shareholder under the doctrine of piercing the corporate veil.

There is no relevant distinction between the dispute in which the Second Circuit found a constitutional right to a jury trial in *Wm. Passalacqua* and that in which petitioners demanded, but were denied, that right in the case at bar. In both cases, the liability to be determined was that of shareholders for money damages resulting from the conduct of the corporation. It makes no difference, of course, that this issue is presented here in a declaratory judgment suit, while in *Wm. Passalacqua* the litigation proceeded as a conventional suit for damages. This Court has long recognized that to determine the right to jury trial in a suit for declaratory relief, one must "look to the kind of action that would have been brought had Congress not provided the declaratory judgment remedy." *Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 284 (1988). Here, respondents seek a judgment that JWC is not liable for money damages caused by Celotex's asbestos activities. In the absence of the declaratory judgment remedy, JWC's liability would be resolved in the existing tort suits seeking money damages from JWC on a veil-piercing theory—precisely the same theory on which the plaintiffs sued the shareholders in *Wm. Passalacqua*. Thus, if the decision below rests on a determination that petitioners have no right to a jury trial, it squarely conflicts with the Second Circuit's decision in *Wm. Passalacqua*.[6]

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[6] Respondents argued to the court of appeals that *Wm. Passalacqua* is distinguishable from this case because the plaintiff there already had a judgment for a sum certain against the corporation which it sought to collect from the shareholders, while petitioners do not yet hold judgments against Celotex. This is a distinction without a difference. Whether an action seeking

b. On the other hand, if the Eleventh Circuit's denial of mandamus rests on a determination that mandamus is not generally available to review the improper denial of a jury trial, or that mandamus may issue to compel a jury trial only on a showing of "clear and indisputable" right, its decision conflicts with longstanding precedents of this Court and with numerous appellate decisions. In an unbroken line of authority commencing with Justice Holmes' opinion in *Ex Parte Simons*, 247 U.S. 231 (1918), the Court has recognized that mandamus is the appropriate means for reviewing denial of a jury trial. As the Court emphasized in *Beacon Theatres*, "[w]hatever differences of opinion there may be in other types of cases, we think the right to grant mandamus to require jury trial where it has been improperly denied is settled." 359 U.S. at 511. In *Dairy Queen*, the Court noted that *Beacon Theatres* "emphasizes the responsibility of the Federal Courts of Appeals to grant mandamus where necessary to protect the constitutional right to trial by jury." 369 U.S. at 472. In both cases, the Court reversed an appellate court's denial of mandamus where the writ was sought to preserve the right to jury trial.[7]

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to pierce the corporate veil and hold shareholders liable is brought with the underlying legal claim against the corporation, as in petitioners' personal injury actions against Celotex and JWC, or only after a judgment has been obtained against the corporation, the remedy sought is the same—money damages—and the entitlement to a jury trial is likewise identical.

[7] Those decisions remain good law. The Court recently cited *Beacon Theatres* with approval for the proposition that "[t]his Court has made clear, for example, that a stay order that deprives a party of the right to trial by jury is reversible by mandamus." *Gulfstream Aerospace Corp.*, 485 U.S. at 288 n.13.

Eight federal courts of appeals have heeded the Court's directive to grant mandamus freely to protect the jury trial right under the Seventh Amendment. *Owens-Illinois, Inc. v. United States District Court*, 698 F.2d 967, 969 (9th Cir. 1983); *In re Vorpahl*, 695 F.2d 318, 319 (8th Cir. 1982); *Maldonado v. Flynn*, 671 F.2d 729, 732 (2d Cir. 1982); *In re Zweibon*, 565 F.2d 742, 745-46 (D.C. Cir. 1977); *In re Union Nacional de Trabajadores*, 502 F.2d 113, 115-16 (1st Cir. 1974), *opinion withdrawn on other grounds*, 527 F.2d 602 (1st Cir. 1975); *Eldredge v. Gourley*, 505 F.2d 769, 770 (3d Cir. 1974); *General Tire & Rubber Co. v. Watkins*, 331 F.2d 192, 194 (4th Cir.), *cert. denied*, 377 U.S. 952 (1964); *Black v. Boyd*, 248 F.2d 156, 159-61 (6th Cir. 1957). Respondents urged the Eleventh Circuit to follow the Seventh Circuit's lone and aberrant decision in *First National Bank of Waukesha v. Warren*, 796 F.2d 999 (7th Cir. 1986)[8], and to deny mandamus on the ground that entitlement to a jury trial can be adequately protected by a post-trial appeal. The Eleventh Circuit's failure to explain its denial of mandamus leaves open the possibility that it accepted respondents' invitation to follow *Warren* and thereby sidestepped the Court's decisions in *Beacon Theatres* and *Dairy Queen*. If so, certiorari should be granted to resolve the conflict among the circuits and to protect the Court's Seventh Amendment precedents. *See Kamen v. Nordberg*, 108 S. Ct. 1119, 1120 (1988) (White, J., dissenting from denial of certiorari).

If the Eleventh Circuit accepted respondents' alternative contention that mandamus should be denied

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[8] The continuing vitality of *Warren* is subject to question even in the Seventh Circuit. *See Maloney v. Plunkett*, 854 F.2d 152, 154 (7th Cir. 1988).

because petitioners did not show a "clear and indisputable" right to a jury trial, its decision would likewise present a conflict necessitating this Court's review. The D.C., First and Ninth Circuits have held that under *Beacon Theatres* mandamus lies to protect the right to jury trial whether or not the right is "clear and indisputable." *Wilmington Trust v. United States District Court*, 934 F.2d 1026, 1028 (9th Cir. 1991), *cert. denied*, 112 S. Ct. 1578 (1992); *In re Union Nacional de Trabajadores*, 502 F.2d at 115-16; *Filmon Process Corp. v. Sirica*, 379 F.2d 449, 450-51 (D.C. Cir. 1967). By contrast, the Seventh and Eighth Circuits have held that the "clear and indisputable" standard does apply in the jury trial context. *See Warren*, 796 F.2d at 1006; *In re Don Hamilton Oil Co.*, 783 F.2d 151, 151 (8th Cir. 1986). If this was the basis for the Eleventh Circuit's decision, certiorari should be granted to resolve the conflict between the circuits.[9]

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[9] The Eleventh Circuit's decision cannot, of course, escape review by this Court simply because the court of appeals chose not to explain the basis for its ruling. *See Taylor v. McKeithen*, 407 U.S. 191, 195 (1972) (Rehnquist, Burger and Powell, JJ., dissenting) ("[w]hile an opinion from the Court of Appeals fully explaining the reason for its reversal of the District Court would undoubtedly be of assistance to our exercise of certiorari jurisdiction here, it is by no means essential"). If a lower court could escape review by ruling without opinion, Supreme Court precedent would be binding only in theory, and settled rights would be eroded in silence. Since any of the possible grounds for its decision would put the Eleventh Circuit in conflict with other circuits or with this Court itself on important issues, this case merits certiorari and is ripe for review. Alternatively, the Court should summarily grant certiorari, vacate the judgment below and remand the case with directions for the Eleventh Circuit to state the grounds for its decision. *See Taylor v. McKeithen*,

2. Whatever the basis for the denial of mandamus, the decision below is clearly wrong on the merits. If the Eleventh Circuit concluded that petitioners have no right to a jury trial, this Court's Seventh Amendment precedents show the error of that ruling. And if the Eleventh Circuit concluded that mandamus should not issue notwithstanding the denial of petitioners' jury trial rights, it is in error because the Court's decisions in *Beacon Theatres* and *Dairy Queen* are directly to the contrary and remain governing law.

a. In determining the scope of the Seventh Amendment, the Court has applied a two-part analysis. First, the Court "compare[s] the statutory action to 18th-century actions brought in the courts of England prior to the merger of law and equity. Second, [the Court] examine[s] the remedy sought and determine[s] whether it is legal or equitable in nature." *Granfinanciera*, 492 U.S. at 42. As the Court has repeatedly emphasized, the second is the more important factor. *Id.*; *Chauffeurs, Teamsters & Helpers*, 494 U.S. at 565; *Curtis v. Loether*, 415 U.S. 189, 196 (1974).

Here, both factors make clear that veil piercing is, as the Second Circuit concluded in *Wm. Passalacqua*, a legal issue with an attendant right to a jury trial. While veil piercing did not exist in 18th-century England, there were analogous legal actions in the law courts that form part of the theoretical basis for the modern doctrine, and the historical analysis therefore supports the right to a jury trial under the Seventh Amendment. More important, this case will decide

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407 U.S. at 194 (vacating appellate decision rendered without opinion and remanding for further proceedings).

whether petitioners can recover money damages, the classic legal remedy, in their pending tort actions against JWC. Because this case resembles and descends from historically legal actions and involves a legal remedy, petitioners' right to a jury trial necessarily follows.

The modern doctrine of piercing the corporate veil has no direct ancestor—in the law courts or in equity—in English law as it existed before 1791.[10] But the Seventh Amendment guarantees the right to a jury trial even in "actions unheard of at common law, provided that the action involves rights and remedies of the sort traditionally enforced in an action at law,

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[10] As one commentator put it, in 18th-Century England "the occasion had not arisen for the Carrollian expedient of 'piercing the corporate veil.' " A. Dubois, *The English Business Company after the Bubble Act 1720-1800* 120 (1971). This is hardly surprising given that there were only a handful of business corporations chartered in England until a later era. "Throughout the whole of the eighteenth century England chartered some half-dozen corporations for manufacturing purposes, and hardly more in any other business sphere." Handlin & Handlin, *Origins of the American Business Corporation*, 5 Journal of Economic History 1, 3 (1945) (hereinafter "Handlin & Handlin"). Instead, business was commonly carried out through joint stock companies, a hybrid form of entity that evolved from partnerships. *Id.* The limited liability of shareholders in a corporation was not definitively resolved in England until Parliament addressed the matter by legislation in the 1850's. *See* P. Blumberg, *The Law of Corporate Groups: Tort, Contract and Other Common Law Problems in the Substantive Law of Parent and Subsidiary Corporations* (hereinafter "Blumberg") § 1.03.3 at 19 (1987). Moreover, since corporations could, in 17th and 18th-century England, assess their shareholders to pay corporate debts, the issue of shareholder liability for corporate debts could only arise if the corporation refused to make such assessments. Handlin & Handlin at 12-13.

rather than in an action in equity or admiralty." *Pernell v. Southall Realty*, 416 U.S. 363, 375 (1974); *see Parsons v. Bedford*, 28 U.S. [3 Pet.] 433, 447 (1830). In such a case, the Court looks for "an analogous cause of action that existed in the 18th century to determine whether the nature of [the suit] is legal or equitable." *Chauffeurs, Teamsters & Helpers*, 494 U.S. at 566.

Modern veil piercing imposes vicarious liability on a corporation's parent company or individual shareholders for the acts of the corporation and typically requires a showing of domination and control over the corporation by the parent or shareholders. Blumberg § 6.01 at 106-07, § 6.02 at 114-15, § 6.05 at 123-24 (1987); *see Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114 (Fla. 1984). In 18th-century England, the principal forms of vicarious liability were that of a principal for the acts of his agent and the liability of a master for his servant's torts (often referred to as *respondeat superior*), both of which were enforced in the law courts. J.H. Baker, *An Introduction to English Legal History* 464-65 (3d ed. 1990); *see* 8 W. Holdsworth, *A History of English Law* 474-79 (1926); Holmes, *Agency*, 4 Harv. L. Rev. 345 (1891). Both species of vicarious liability rest on the control of the principal or master over the agent or servant, much as modern veil piercing depends on a showing of domination and control of the subsidiary by the parent. *See ibid.* The close similarity between vicarious liability under the law of agency and *respondeat superior* and the derivative liability of a parent corporation for the torts of its subsidiary points up the legal roots of modern veil-piercing doctrine. The appropriateness of this analogy is underscored by the fact that courts

often draw on common law notions of *respondeat superior* and agency in articulating the elements of modern veil piercing. Blumberg § 6.06 at 125-128; *see Davis v. Alexander*, 269 U.S. 114, 117 (1925) ("[w]here one railroad company actually controls another and operates both as a single system, the dominant company will be liable for injuries due to the negligence of the subsidiary company"); *H.J., Inc. v. International Telephone & Telegraph Corp.*, 867 F.2d 1531, 1549 (8th Cir. 1989) (agency); L. Gower, *Gower's Principles of Modern Company Law* 123-24 (4th ed. 1979) (agency is one theory courts in England have used to lift the corporate veil).[11] In short, veil piercing has a firm basis in traditional common law claims. The first branch of this Court's analysis therefore supports a finding that petitioners have a right to a jury trial.[12]

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[11] Other theories underlying modern veil piercing include the theories that a corporation is a mere "instrumentality" or "alter ego" of another corporation or has no separate corporate identity. Blumberg § 6.01 at 111. While these theories have no clear 18th-century ancestors, they closely resemble *respondeat superior* and agency in requiring a showing of domination and control of the wrongdoer by the party on whom liability is sought to be imposed. *Id.* at 106-07, 111. The similarity of these newer theories to the historically legal theories underlying veil piercing further reinforces the conclusion that veil piercing is legal, rather than equitable, in its historical derivation.

[12] In attempting to trace veil piercing to exclusively equitable roots, respondents pointed below to only one English decision of the 18th-century, *Dr. Salmon v. The Hamborough Company*, 1 Chancery Cases 204 (1671). That was a suit in equity in which the House of Lords ordered a corporation to make an assessment on the shareholders sufficient to pay the corporation's debt to the plaintiff. *Id.* at 207. The decision was grounded on the corporation's power to assess its shareholders and resulted in the

b. The legal nature of the remedy at issue here would make petitioners' right to a jury trial clear even if the history were less conclusive than it is. *See Chauffeurs, Teamsters & Helpers*, 494 U.S. at 570-73. The essence of the dispute between petitioners and respondents is whether JWC is or is not liable to the Asbestos Victims for money damages caused by Celotex's asbestos activities. Money damages is,

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widespread omission of that power in later corporate charters precisely to avoid the result in *Dr. Salmon*. Blumberg § 1.03.1 at 13 ("[a]s a result, indirect liability in England gradually disappeared"); L. Gower, *Gower's Principles of Modern Company Law* 26; 8 W. Holdsworth, *A History of English Law* 204-05. It remains true that a plaintiff with an unsatisfied judgment against the corporation may sometimes compel the corporation to enforce obligations of the shareholders to the corporation (such as unpaid stock subscriptions), much as the Court in *Dr. Salmon* compelled the corporation to make assessments. *See Hawkins v. Glenn*, 131 U.S. 319, 332-34 (1889); *Hatch v. Dana*, 101 U.S. 205, 214-15 (1879); *Providence State Bank v. Bohannon*, 426 F. Supp. 886, 890 (E.D. Mo. 1977), *aff'd*, 572 F.2d 617 (8th Cir. 1978). That principle, however, has nothing to do with modern veil-piercing which subjects shareholders and parent companies to liability without regard to whether they have unfulfilled obligations to their corporations or subsidiaries. Respondents also relied below on a 19th-century line of American cases espousing the "trust fund" doctrine under Justice Story's decision in *Wood v. Dummer*, 3 Mason's Rep. 308, Fed. Cas. No. 17,944 (1824). *See Hollins v. Brierfield Coal & Iron Co.*, 150 U.S. 371, 382-83 (1893); *United States v. Van Diviner*, 822 F.2d 960, 965 (10th Cir. 1987). This doctrine "has never been recognized in England, nor does it exist under the common law . . . ." 15A W. Fletcher, T. Bjur & J. Reinholtz, *Fletcher's Cyclopedia of the Law of Private Corporations* § 7371 at 55 (1990); *see Sterrett v. White Pine Sash Co.*, 176 Wash. 663, 30 P.2d 665, 666 (1934). Since the trust fund doctrine did not exist in English practice in 1791 when the Constitution was adopted, it is irrelevant to the Seventh Amendment historical analysis.

of course, a quintessentially legal remedy. *Curtis v. Loether*, 415 U.S. at 196 (money damages is "the traditional form of relief offered in the courts of law"). Because their ability to obtain legal relief will be decided in this case, petitioners are entitled to a jury trial.

The declaratory nature of the action commenced by respondents below in no way alters this conclusion. Because declaratory relief is a modern innovation, rather than a creature of the common law or traditional equity practice, the right to a jury trial in such an action is tested by looking to the claims that would have been brought if declaratory relief were not available. *Gulfstream Aerospace Corp.*, 485 U.S. at 284. A party that has been or is about to be sued on legal claims cannot cut off his opponent's right to a jury trial by filing a preemptive suit for a declaratory judgment that it has no liability on those legal claims. *Beacon Theatres*, 359 U.S. at 504. That, however, is precisely what the decision below permits the debtors to do here.

If declaratory relief were not available, the issue whether JWC's corporate veil can be pierced to make it liable for money damages caused by Celotex's torts would be resolved in the pending individual tort suits seeking money damages from JWC and in the *Cimino* class action. The plaintiffs in those cases, including petitioners, have demanded jury trials, and there can be no serious dispute that they have a constitutional right to jury trials in that posture. Now, however, respondents claim, and the Eleventh Circuit has apparently held, that petitioners' right to a jury trial in those cases has been eliminated by respondents' simple expedient of suing for a declaratory judgment

to preclude money damages on the ground that the veil between Celotex and JWC cannot be pierced. In permitting this circumvention of the Seventh Amendment, the decision below flouts the Court's holding in *Beacon Theatres* and cannot stand.[13]

c. If the Eleventh Circuit's disposition reflects a view that mandamus is not ordinarily appropriate to review the denial of a jury trial, or that petitioners failed to show a clear and indisputable right to a jury trial, its decision is plainly wrong. These limitations on relief were imposed by the Court in ordinary man-

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[13] Respondents argued below that the personal injury lawsuits and the *Cimino* class action seeking money damages from JWC on a piercing theory should be ignored in evaluating the relief at issue in this action and that the court of appeals should focus instead on the relief sought in the *Larned* class action. However, the undisputed right of these personal injury plaintiffs to a jury trial on their claims for money damages against JWC cannot be eliminated merely because other claims asserted against JWC are allegedly equitable. In any event, the relief at issue from *Larned* is plainly legal. The relief sought in *Larned* on the veil-piercing issue is a judgment declaring that the corporate veil between JWC and Celotex is pierced and declaring "JWC to be liable for all asbestos claims against Celotex," the precise opposite of the relief sought by respondents here. In the absence of declaratory relief, the piercing issue raised in *Larned* would plainly be resolved in the hundreds of personal injury lawsuits seeking to hold JWC liable for money damages caused by Celotex's asbestos activities. Like this adversary proceeding, therefore, the piercing claim in *Larned* involves legal relief. While *Larned* also seeks equitable relief in the form of an injunction, an accounting, and a receivership, none of that relief is at stake in the trial on the veil-piercing issue set for December 1993. Even if that trial implicated equitable along with legal remedies, petitioners would enjoy a Seventh Amendment right to jury trial of the legal issues under the well-settled doctrine of *Beacon Theatres*, 359 U.S. at 510-11, and *Dairy Queen*, 369 U.S. at 479-80.

damus cases to "insure that the writ will issue only in extraordinary circumstances . . . ." *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980). The Court has made clear, however, that these requirements have no application when mandamus is sought to vindicate the right to a jury trial. Any contrary holding by the Eleventh Circuit is inconsistent with the Court's long-standing precedent.

The Court squarely held in *Dairy Queen*, *supra*, and *Beacon Theatres*, *supra*, that the courts of appeals have the responsibility to use mandamus to correct improper denials of a jury trial. *See* page 12, *supra*. The rationale for using mandamus rather than appeal to protect the right to a jury trial was explained in the Court's first decision in the area, *Ex Parte Simons*, 247 U.S. at 239:

> If we are right, the order was wrong and denied the plaintiff of her right to a trial by jury. It is an order that should be dealt with now, before the plaintiff is put to the difficulties and the Court to the inconvenience that would be raised by a severance that ultimately must be held to have been required under a mistake.

The *Simons* rationale retains its full vitality today.

The Seventh Circuit is the only circuit to hold that mandamus is available to review jury trial denials only when the denial can not be effectively reviewed on appeal.[14] The Seventh Circuit concluded in *Warren*,

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[14] In the Seventh Circuit's view, this would normally occur only when a trial court proposes to try equitable claims in advance of overlapping legal claims, presenting the danger that

supra, that, to the extent *Dairy Queen* and *Beacon Theatres* held otherwise, they had been "undermined" by later decisions from the Court emphasizing the extraordinary nature of the writ of mandamus and the need to confine it to those cases which can not be reviewed by appeal. 796 F.2d at 1006. However, none of the cases that the Seventh Circuit cited were jury trial cases. *Id.* at 1004-06. Those cases are simply examples of the principles applicable in mandamus cases outside the jury trial context and say nothing about the continuing vitality of *Dairy Queen* and *Beacon Theatres*. *Id.* at 1008 (Ripple, J., dissenting).

Dairy Queen and *Beacon Theatres* also make clear that, where the right asserted is the right to a jury trial, there is no requirement that the petitioner show a "clear and indisputable" right in order for mandamus to issue. This limitation on the availability of mandamus relief was likewise imposed to limit the writ to "extraordinary circumstances." *Allied Chemical*, 449 U.S. at 35. Under *Dairy Queen* and *Beacon Theatres*, however, mandamus is not confined to "extraordinary circumstances" in jury trial cases but is the normal method of review. The Court's emphasis in *Dairy Queen* on the "responsibility" of the courts

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the decision on the equitable claims would have preclusive effect on the legal claims and thus effectively deprive a party of its right to a jury trial on the legal claims. 796 F.2d at 1003-04. While this fact scenario was present in *Beacon Theatres*, nothing in that decision suggests that its holding was limited to cases where prior determination of equitable claims may have preclusive effect on legal claims. This Court's later decision in *Dairy Queen*, which did not involve a risk of separate trials of legal and equitable claims, made clear that the use of mandamus to review denials of the right to trial by jury is not limited to the fact setting of *Beacon Theatres*. 369 U.S. at 472.

of appeals to issue mandamus to correct improper denials of a jury trial would ring hollow indeed if the writ were confined to cases where the right is shown to be "clear and indisputable." As the D.C., First and Ninth Circuits have recognized, the plain import of the Court's decisions in *Dairy Queen* and *Beacon Theatres* is that mandamus should issue to correct improper denials of the right to a jury trial whether the question is a close one or not. *Wilmington Trust*, 934 F.2d at 1028; *In re Union Nacional de Trabajadores*, 502 F.2d at 115-16; *Filmon Process Corp. v. Sirica*, 379 F.2d at 450-51; *see* 16 C. Wright, A. Miller, E. Cooper & E. Grossman, *Federal Practice & Procedure* § 3935 at 243-44 (1977) ("review and correction by mandamus [is required], no matter how difficult or uncertain the law surrounding the jury trial question may be"). Thus, if the Eleventh Circuit denied mandamus on the ground that petitioners failed to make a "clear and indisputable" showing of their right to a jury trial, its decision is wrong and should be reviewed by this Court on certiorari.[15]

3. The appropriateness of certiorari in this case is reinforced by the substantial importance of this litigation in its own right and the broad implications of the issues presented for other litigants. More than 100,000 persons have unsatisfied claims for personal injuries caused by exposure to Celotex asbestos products. The total amount of those claims, calculated at historical settlement values, exceeds $1 billion without considering the claims of those thousands of workers exposed to Celotex asbestos products over the years

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[15] Denial of mandamus on this ground would also be erroneous because, as we showed above, pages 15-18, *supra*, petitioners' right to a jury trial is indeed clear and indisputable.

whose diseases have not yet manifested but will do so. Only the smallest fraction of the claims can be satisfied from the assets of Celotex alone. The only hope of recovering more than that small fraction lies in the claims that respondents seek to preclude in this case. Under the decisions of the courts below, those claims will be resolved without a jury. The lower courts' decision to deny a jury trial to thousands of litigants seeking to recover billions of dollars of personal injury damages should be reviewed by this Court.

The issues presented here are recurring ones that will affect many litigants other than petitioners. Claims based on piercing the corporate veil are brought in the federal courts with increasing frequency, and it is of obvious importance that the right to a jury trial in such actions be settled rather than depend on the geographical happenstance of where a case is brought. Without a decision from this Court, the lower courts will fall into increasing disarray on the important constitutional issue whether the Seventh Amendment extends to claims which seek to pierce the corporate veil.[16]

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[16] There are already conflicting district court decisions from circuits other than the Second and Eleventh. *Compare Perpetual Real Estate Services, Inc. v. Michaelson Properties, Inc.*, 775 F. Supp. 893, 895 n.1 (E.D. Va. 1991), *rev'd on other grounds*, 974 F.2d 545 (4th Cir. 1992) (following *Wm. Passalacqua*); *Bower v. Bunker Hill Co.*, 675 F. Supp. 1254, 1261-62 (E.D. Wash. 1986) (finding a right to a jury trial on a claim that subsidiary corporation was alter ego of parent) *with United States v. Golden Acres, Inc.*, 684 F. Supp. 96, 103 (D. Del. 1988) (no right to a jury trial on claim for piercing corporate veil); *In re Lee Way Holding Co.*, 118 B.R. 544, 547-48 (Bankr. S.D. Ohio 1990) (same).

The issues raised by the Seventh Circuit's decision in *Warren*, and by the decision below to the extent it follows *Warren*, likewise have far-reaching significance for future litigants. The complexities of modern litigation, and the proliferation of new causes of action not easily labelled as legal or equitable, engender substantial uncertainty concerning the right to a jury trial. There are thus frequent legal challenges to a district judge's denial of the right to a jury trial. As matters now stand, however, the proper means to review such denials, by petition for mandamus or direct appeal, and the standard for granting mandamus, vary with the circuit in which a lawsuit happens to be filed. The method of review of decisions concerning the constitutional right to a jury trial should be uniform. The Court should grant certiorari to resolve the issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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July 16, 1993

APPENDIX

APPENDIX A

ASBESTOS VICTIMS REPRESENTED BY CAPLIN & DRYSDALE AND RYDBERG, GOLDSTEIN & BOLVES IN MAKING THIS PETITION FOR A WRIT OF CERTIORARI

In the underlying bankruptcy adversary proceeding from which this petition arises, the respondents, Walter Industries, Inc. and its subsidiaries, have sued for declaratory relief. They have named as defendants The Celotex Corporation and Jim Walter Corporation, as well as several thousand asbestos personal injury plaintiffs with claims against those two companies and the respondents.

Caplin & Drysdale, Chartered, and Rydberg, Goldstein & Bolves, P.A., have entered appearances on behalf of many but not all of the asbestos victims named as defendants in the adversary proceeding, and have litigated the proceeding on behalf of all asbestos victims with claims against the respondents' assets. A few other firms have entered appearances on behalf of some of the other named individual defendants; except for filing answers in their clients' behalf, none has actively participated in this proceeding. It is unclear whether the respondents ever served the remaining individual defendants. The respondents, in any event, agreed with the bankruptcy judge that they would not seek default judgments against any of the asbestos victims who may have been served with process, but who failed to appear and answer their complaint.

Caplin & Drysdale, Chartered, and Rydberg, Goldstein & Bolves, P.A., represent the following asbestos victims as defendants in the adversary proceeding, all of whom are petitioners before the Court:

Anita Rex Hillberg

J.W. Baker
Mable Baker
J.C. Banks
James Bratton
Peggy Jo Bratton
Jack Byrd
Rosalie Byrd
Falah Carter
Louis Carter
George Cato
Margaret Harrison
Robert Harrison
Mary Lois Holley
Samuel Holley
Mary Lou Martin
Paul Martin
Juanita Mullens
Tony Oliver Mullens
Alfred Pintor, Jr.
Carolyn A. Pintor
Bonnie Rhodes, Adm. for William Rhodes, deceased
Bonnie Rhodes
Bobby Jean Robinson
Louise Robinson
Harry Selman
Margaret R. Selman
Sammie Shamblin
Monnie I. Shamblin
John Hamilton Thomson
Virginia Thomson

William Chisholm

Alvin T. Adams, Sr.
Ettie Jane Adkins

Jessie Allen
Johnnie Arline
Oran Arline
Catherine Armstrong
Leimuel T. Armstrong, Jr.
Billie Jo Bagett
Eloise Baggett
Eloise Baggett, Adm. for
Rufus Tyler, deceased
Thomas Baggett
Herbert R. Bailey
Margaret Bailey
Rufus A. Ballard, Sr.
Thelma Ballard
Lola Barrington
Ralph Barrington
James Betz
Donald C. Black
Jimmie Ruth Bonds
Maulden Bonds
Joyce Borne, Adm. for
Otis Borne, deceased
Thomas Borque
Virginia Borque
Harlan F. Bradberry
Junior Brady
Myrtle Broussard, Adm. for
Frank Broussard, deceased
Geneva Brown
Jerry L. Brown
Warren J. Brown
Getrude Buchman
John Buchman
Annie Bucklew
Woodrow Bucklew
Jeaneane Burdine
Raymond Burdine
David L. Carrington

Elizabeth Chambers
Jo Ann Cherry
Robert Cherry
Roy Chesson
Gene Church
James T. Clark
Q.B. Clark
Don G. Clifton
Ruby Clifton
Billie Russell Coleman
Wilbur H. Cornes
Albert D. Cowart
Joanne Cowart
George Crawford
Lola B. Crawford
Robert C. Culbert
Betty R. Davis
Beola Delafosse
Jesse Delafosse
Ray Easley
Rudolph Falgout, Sr.
John H. Faulk
Wylma Faulk
Beatrice Fezia
Jesse Fezia
Barney Ford
Rebecca Ford
Alma Fortenberry
Bertha Forward
Emerson Forward
James E. Foster
Lee Gabel
Garfiled Gage, Sr.
Melanie Gage
Alfred C. Gentry
Pauline Gentry
Arthur Gilchriest
Betty Gilchriest

Mary Granger
Evie Graves, Adm. for
Fred Graves, deceased
William A. Hale
Eva Hanks
George Hanks
Annie Mae Hardy
Mason Alexander Hardy
Lily Hart
Robert B. Hart
Charles M. Harvard
May Harvill
William Barclay Harvill
Frances Henslee
Lee Henslee
John Henry Henson
Minnie Henson
French Hicks
Nancy Hicks
Glenn B. Hilton
Leta Hilton
Catherine Hollis
John J. Hollis, Sr.
Syble Hutson, Adm. for
Ersel Hutson, deceased
Myrtle Issacs
Walter Issacs
Alex Ivins, Adm.
for Alvie Ivins
Andrew J. Jacobs, Sr.
Melvia Jacobs
Coolie R. Johnson
Pearl E. Johnson
Joe Ed Jones
Karen Jones
John C. Kelly, Jr.
Winefred Kelly

Donnie Gene Killough
William Knowles
Joseph Harry Lalonde
Mary Lalonde
Marianne Lytle
Robert W. Lytle
Nell Lytton
William P. Lytton
Mary E. Mabry, Adm. for
George Mabry, deceased
Gay Marino
Salvador Marino
Gloria Merendino
Morris Merendino, Jr.
Edwin Morgan
Mary Morgan
Jessie Morreale
Peter Morreale
Doyle Lee Morris
Earl M. Morris
Donald Moss
Melvia Moss
Bonnie Mott
Clovis Mott
Barbara Neugent
Mack A. Neugent
R.C. Norwood
Leon M. Page
Marie Page
Andrew J. Patrick
Helen Patrick
Betty Pelt
Charlie A. Pelt
Joe A. Peralez
Carol Pilgreen
Jewel Pilgreen
Juanita Poole, Adm.
for Marvin Poole, deceased

Bryant D. Mullins
Lee Nelson
Mary Nelson
Wiliam H. Posey
Hazel Prescott
Spencer Prescott
Pauline Ramirez
Grover C. Ransom
Kenneth R. Reppond
Tamae Reppond
Carroll C. Resweber
Rena M. Richard
Esker Roach
J.T. Ross
Lena Sanford
Simon Bland Sanford
James M. Sellers, Sr.
Velma Sellers
Gene M. Sexton
Jenny Sexton
Cora Simmons
William Simmons, Sr.
Morris Simon
Aline Sims
Clifford Sims
Abbie L. Singletary
Frankie Smith
Warren Smith
Lois Snodgrass, Adm. for
Thomas Snodgrass, deceased
Louis Snodgrass
John T. Snowden
Kenneth Spencer
Ruby Spencer
Lawrence C. Spurlock
Linda Spurlock
Floyd J. Stevens
Percy L. Stewart

Charlene Stough
Marcus D. Stough
Charley Sweat
Oveda Sweat
Alvin E. Taylor
Juanita Taylor
Larry Joe Terrell
Raymond A. Thibodeaux
Audrey Turner
Herman Turner
George Tyer
Selma Tyer
Billy Tyson
Jo Ann Tyson
Martha Tyson
Robert Tyson
Jimmie L. Van Dyke
Virginia VanRanden
Clifton Warden
Hazel Warden
Albert J. Watson
Pauline Watson
Minnie Welch
Wilbur Welch
Anna Williams
Bonnie Rosa Williams, Adm. for
James D. Williams, deceased
Harold R. Williams, Sr.
Rose Williams
Virgil C. Williams, Sr.
Johnnie A. Williamson
Lenard W. Williamson
Oleta Williamson
Leonard Wing
Pearl Wing
Bertha Wright
Hollis L. Wright
Maurice Gerald Wright

Philip Wright
Carolyn Wych
Herbert Wych
Bobbie Y'Barbo
Richard D. Y'Barbo, Sr.
Geraldine York
J.C. York

Ada Bell
Russell Bell
Katherine Boalt
Terry Boalt
Howard A. Bowling
Iris Brisendine
Lowell T. Brisendine
Irvin Campbell
Cledith C. Carpenter
Donald Cross
Fannie L. Cross
Russell E. Crowell
Jackson L. Ellis
Romie A. Hodges, Jr.
Betty J. Holstein
Stan Holstein
Charles Jarrett
Lenore Jarrett
Beve G. Justice
William L. Kinder
Buford Marker
Sandra Marker
Dewey McCallister
Tressie McCallister
Betty B. McCord
Elsie G. McGrew
Goble Mundy
Mary Mundy
Harry E. Nelson
Cecil J. Ricketts

Eva Ricketts
Jenny Riddle
Roger Riddle
Wilford Roach
Georgia B. Smith
Thorl Smith, Sr.
Howard P. Taylor
Dorothy Thomas
Forrest Thomas
Harold Turley
Julia Vickers
Robert Vickers
Larry D. Waller

George N. Been
Hylmar Clifton
Henry Donaldson
Gary R. Frazier
Katheryn Lee Hall for
Wayman H. Hall, deceased
Oletha M. Hitt for Arnett D.
Hill, deceased
Rose E. Ruble
Woodford D. Skidmore
Donald L. Smith
Bernice H. Westfall

Ray Belle Adams
Jack Allen
Jacqueline Allen
Emary Alston
Frances Alston
Donald Anderson
Shirley Ann Anderson
Alberta Andrews
Willie Andrews
Laura Andrus, Adm. for
Raymond Andus, deceased
Laura Andrus

George Antoine
Gertie Mae Antoine
Earl Octabe Ardoin
Sadie Ardoin
Edina R. Arnoco
Della Mae Arnold, Adm. for
Robert P. Arnold, deceased
Della Mae Arnold
Edna Ruth Arnold
Edna Ruth Arnold, Adm. for
Johnnie E. Arnold, deceased
Rube Arnold
Rvay Arnold
Ora E. Arrington
Sylvia Arrington
Roy Lee Ashworth
Shirley Ann Ashworth
Genell Austin
Jack Alton Austin
Kerry Avie
Louella Avie
Ernesto Ridrigo Baca
Janice Baca
Jack Harvey Baird
Mary C. Baird
George Elliott Bankston
Lanell Bankston
Novelle Bankston
Woodrow W. Bankston
Donnie M. Barnes
Wilma Barnes
Jeanine Barnett
Michael Barnett
Dorothy Barrett
Mose Batiste
Beverly Beavens
Charles R. Beavens

O.C. Harrell Bell, Adm.
for Preston Bell, deceased
Mary Belt
Joseph Nolan Benoit
Mattie Gould Berry
Elton Berwick
Nadine Berwick
Perry Berwick
Clauzell Bishop
Bobby Boley
Eugenia N. Boley
Louella L. Bonin
Robert L. Bonin
Alean Booker
Lesley R. Booker
Billie Bourgeois
Flora M. Bourgeois
Murphy E. Bourgeois
Paul Justis Bourgeois
Bertha M. Broussard
Dallas Broussard
Edward Broussard
Leroy J. Broussard, Sr.
Leroy J. Broussard, Adm.
for Mary Z. Broussard, deceased
Olga O. Broussard
Sidney Broussard
Victoria Broussard
Alice Brown
Elizabeth Brown
Haywood Brown
James William Brown
Laurel Brown, Adm. for
Willis F. Brown, deceased
Laurel Brown
Minnie Ola Brown
Minnie Ola Brown, Adm. for
Carl Myrtis Brown, deceased

Thomas Howard Brown
Ganell M. Brunet
Leon Marvin Buckalew
Marilynn Burke, Adm. for
Garfield & Mary Vallow
Elsie Burns
Victor P. Burns
Robert Joseph Burroughs
Angeline Cammereri
Anthony T. Cammereri
Chester Campbell
Johnnie Cantu, Jr.
Ruth Cantu
Aubrey Wayne Carruth
Eva Mae Carruth
Etha Caudry
Alford Paul Chance
Carl Chance
Ellen L. Chance
Marie B. Chance
Alton D. Clark
Gladys Clark
Shirley Marie Clark
Wilmer Joseph Clark
Mildred Cogar
Thomas Cogar
Bessie V. Coker
Johnnie E. Coker
Everett Collier
Ruby Dell Collier
Charles Comeaux
Geraldine Cooper
James Wilburn Cooper
Vivian E. Cooper
Vivian T. Cordeau
James Coudrain, Jr.

Nancy Coudrain
Benjamin Delton Covington
Charlotte Covington
Elsie Credeur
Elwood J. Credeur
Mebaline Curtis
Ralph E. Curtis, Jr.
Jack Albert Cutler
Emmett G. Dammon
Hazel Dammon
George Wesley Daniels, Sr.
Sally Daniels
Willie Eugene Daniels
Cora O. Darby
Wesley Darby
Betty Jo Davenport
Francis Davenport
Francis Davenport, Adm. for
Earl L. Davenport, deceased
General Jimmie Davis
Harold Davis
Mercides Davis
Ruth J. Davis
Jack Day
Joyce Day
Alphonse Delcambre, Jr.
Leamon Dennis
Alton James Deyoung
Betty L. Deyoung
Bertha Dixon
Bertha Dixon, Adm. for
Orin Dixon, deceased
Joseph D. Dominique
Leroy Dorsey
Ardell Drake
Ardell Drake, Adm. for
Lemuel E. Drake, deceased
Cornelius Drake
Hazel Drake

Maydell Dubois, Adm. for
Dennis Dubois, deceased
Maydell Dubois
Lilly B. Ducote
George Oliver Dugas
Helen Dugas
Ovide Dugas
Patrick J. Dugas
George Duhon
Margie Duhon
Bonnie Duncan
Weldon Festus Duncan
James William Dunlap
Jeanetta Dunlap
June Pauline Dunnington
Guy Roy Duplantis
Lydia Duplantis
Cecil A. Eason
Ethel M. East
Nolan J. East
Edgar Eaton, Jr.
Edgar Eaton, Adm. for
Dora Eaton, deceased
Amos Raymond Edwards
Mary Ann Edwards
Mary Ann Edwards, Adm. for
Albert Edwards, deceased
Florine Emerson
Leroy Eubanks
Minnie Eubanks
Bertie Evans
Donald Vernon Evans
Dwanna Evans
Glen Milton Evans
Fannie Falgout
Leo Falgout
Jonathan Francis Fifield
Mildred Fifield

Herbert Findley
Kathleen Findley
Dorothy Fisk
Raymond Fisk
Jerry Flores, Adm. for
Frank W. Creel, deceased
Billie Bob Folsom
Sammie Jean Folsom
Ella Mae Fondren
Glyn Samuel Fondren
Cecile Fontenot
Noah Fontenot
Lissie Foreman
Tom Foreman
Beatrice Forma
James R. Forman
Frank Eugene Francis
Willie Francis
Ramona Frederick
Robert Frederick
Nelson Hamer Free
Opal Freeman
Jefferson J. Fuselier
Loyce Fuselier
Betty Fuss
John Howard Fuss
Alfred J. Garlington
Linda W. Garlington
Anthony Garrett
Viola Garrett
Alma Lois George
Morris George
John W. Gibson
Evelyn Gibson
Kenneth Eugene Gibson
Lillie Gibson
Carroll K. Gilchriest

Opal Gilchriest
Annie Goss
Charles Goss
Edna Gotcher
Edna Gotcher, Adm. for
Harvey E. Gotcher, deceased
Rosa Lee Jenkins Granger
Rosa Lee Jenkins Granger, Adm.
for Jack P. Granger, deceased
Jean Guidry
Margie Guidry
Adam Guilliame
Catherine Guilliame
Augustine Guillot, Sr.
Ida Guillot
Amy Hagler
James Daniel Hagler
Willie Mae Hailey
Mildred Hamm
Robert Melvin Hamm
Georgia Hardy
Vernie O'Neal Hardy
Doris B. Hargraves
Otis Leander Hargraves, Jr.
Fern W. Harper
Fern W. Harper, Adm. for
Charles D. Harper, deceased
Robert J. Harrington, Jr.
Betty J. Harris
James Hugo Harris
Rosalee Harris
Wanda Harris
Bayard Barward Harrison
Nellie Harrison
Herman Hart
Reo Hart
Roland Havens
Shirley Havens

Maidie L. Haynes
Oliver Beazley Haynes
Joyce Head
Raymond A. Head
Darlene Herbert
George Lea Hebert
Ronald J. Hebert
Yola Mae Hebert
Charles Hernander
Joe Angel Hernander
Theresa Hernandez
Viola Hernandez
William Harold Herrington
Walter Benjamin Hailey, Sr.
Wilton Higginbotham
Barbara Hoffpauir, Adm. for
Kenneth Hoffpauir, deceased
Barbara Hoffpauir
Sarah Hoffpauir
Walter Hoffpauir
Patsy J. Holievina
Pete Edward Holievina, Sr.
F.E. Hollins
Charles Henry Holloway
Jeannette Holloway
Christine Holstead
Thelbert Holstead
George Franklin Horton
Kathryn Horton
Lovelle Howard
Reba Howard
Anna Hughes
Bertie L. Hughes
Con Roy Hughes, Jr.
Waylon H. Hughes, Sr.
Ardy Cleveland Humble
Eva Mae Humble
Carl Hunt
Mary Lou Ivey

Thomas Hilton Ivery, Sr.
Neil O. Jackson, Adm. for
David C. Jackson, deceased
Neil O. Jackson
Othel Jackson
Dorothy James
Ernest James
Freeda Lucille James
Sam E. James
Loyce K. Jarrell
Elmer Jasper
Luthine Jasper
Claude Jaynes, Jr.
Erma D. Jaynes
Leslie Jeffers
Rose Jeffers
Louis Donald Jenkins
Ruby Jenkins
Birdie Jinks
Glasper Leonard Jinks
Andrew Johnson, Adm. for
Issiah Johnson Sr., deceased
Andrew Johnson
Daniel Johnson
Elma Wynona Johnson
Roy Johnson
Sadie Johnson
Sadie Johnson, Adm. for
Stanford Johnson, deceased
Sydney Johnson
William Johnson
Troy Johnston, Adm. for
Samuel P. Johnston, deceased
Troy Johnston
Alvin Jones
James Merwin Jones
Louise L. Jones

Louise L. Jones, Adm. for
Douglas Jones, deceased
Nancy L. Jones
Thelma Jones
Thelma Jones, Adm. for
John W. Jones, Jr., deceased
Alice J. Jules
John Wesley Jules
James Edward Kaske
Mary Kaske
Christine Kees
Minos Perry Kees
Evon Kennerly
Wilton Kennerly
Dewitt T. Kent
Lillie Kimmey
Lillie Kimmey, Adm. for
Joseph Kimmey, deceased
Harold William King
Syril C. King
Maey Jane Knight
Margaret Knighton
Robert Ragan Knighton
Gertie Lee Kyles
R.C. Kyles
Bonnie Marie Lambert
Eddie Joe Lambert
Gladys Land
Robert Lee Land
Etha Landry
Etha Landry, Adm. for
Harry J. Landry, deceased
Warren Landry
Rachel Larkins
Wilbert Larkins
Marhta Larned
Leonard Curtis LaSalle
Mary R. Lasalle
Mary Louise Latimer

Robert Latimer
Bobby G. Lawrence
Phyllis Lawarence
Enoch Leavings
Marie Leavings
Georgia Leblanc
Georgia Leblanc, Adm. for
Batson Leblanc, deceased
Joseph Herbert Leblanc, Sr.
Margaret Leblanc
Rosa Carlton Leblanc
Rosa Carlton Leblanc, Adm. for
Nelson A. Leblanc, deceased
Ethel Lebrun
Harvey A. Lebrun
John W. Lee
Joyce Lee
Lorene Lenormand
Therman Cleo Lenormand
Michael Joseph Leonard
Michael Joseph Leonard, Adm.
for Willis Guillory, deceased
Thelmer Nathanel Little
Dragica Lockhart
Everett Lockhart
Diana L. Lonion
Donald John Lonion
Annie Louviere
Norris Louviere
Joseph Adams Lupton
Lucille B. Lupton
Lottie Luster, Adm. for
Dewey Luster, Jr., deceased
Verlyne Lutgring
Verlyne Lutgring, Adm. for
Ralph Lutgring, deceased
King Shedrick Lyons
Louella Lyons

Louise Maggio, Adm. for
Louis Maggio, deceased
Charlotte Mahan
Ralph Truman Mahan
Albert Mallet
Lucille Mancil
Walter Mancil
Betty Pearl Marshall, Adm. for
Glen M. Marshall, deceased
Betty Pearl Marshall
Alfred James Martin
Eloise Martin
Philip Martin
Ruth Martin
Jeanne Matte
Matt Robert Matthews
Albert Maybou
Faye J. McCullough
Grady L. McCullough
Kathryn McDaniel, Adm. for
K.P. McDaniel, deceased
Kathry McDaniel
Anna Mae McGallion
Dalton McGallion
Jo Evelyn McGee, Adm. for
William Skelton, deceased
Jo Evelyn McGee
Helen Marie McGuire
Helen Marie McGuire, Adm.
for Jerry D. McGuire, deceased
Maxine McKinney, Adm. for
Flernoy McKinney, deceased
Viola McKinney
Willie McKinney
Jo Ann McKnight
Joe Dan McKnight, Sr.
Beulah McMahon

Beulah McMahon, Adm. for
James T. McMahon, deceased
Maxine McNeely
William James McNeely
Robert Dean Melton
Gloria Merendino
Louis Merendion
Norma Merritt
William Earl Merritt, Jr.
Daisy Mickles
Rhea Middleton
Rhea Middleton, Adm. for
Wheeler Middleton, deceased
Ella Miles
Ella Miles, Adm. for
Thomas Miles, deceased
Barbara G. Millican
Ronald Birgman Millican
Raymond DeWitt Mingle
Kathryn Mire, Adm. for
Roy Joseph Mire, deceased
Kathryn Mire
Geraldine Montgomery, Adm. for
Alfred Montgomery, deceased
Carol Harrison Moore
Dave M. Moore
Eda E. Moore
Emma E. Moore
Glenn Moran
Sylvia Moran
Georgia Morvant
Matthew George Morvant
Glenda Mouton
Wallace Mouton
Jack Mullen, Jr.
Mertie Mullen
Dionicio Solorzano Munoz

Rose Murphy, Adm. for
D.B. Murphy, deceased
Charley Nesbitt
Elizabeth A. Nesbitt
Mary Nevay, Adm. for
Wilbert Nevay, deceased
Mary Nevay
Bobbie M. Newman
Dorothy Newman
Marion Newman
William James Newman
George Nix
Jake C. Norman, Sr.
Elishia Odom
Robert Bradfield Officer
Eva Oglesbee
Tom Donald Oglesbee
Elsie Oliver
Johnnie Odis Oliver
Amy Oubre, Adm. for
Whitney B. Oubre, deceased
Amy Oubre
Dorothy M. Owens
Fred M. Owens
Rosanna Owens
Welton Owens
Grace Pabon
Ramon Pabon
Drullie G. Paine
Holllis B. Paine
Henry Parker
Lois Marie Parker
Mary Parker
Mary Parker, Adm. for
Alvie L. Parker, deceased
Alice Pastorella
Carlo Pastorella
Patricia Sue Patterson

Terrance Alfred Patterson
Freeman Eugene Peart
John Eva Peart
Betty L. Peddy
Thomas Ray Peddy
Florence Pelts
William H. Pelts
Jess W. Phillips, Sr.
Arthur Leonard Philpott
Geneva L. Philpott
Alice Pickens
Henry Langham Pickens, Sr.
Ivy Lee Pickett
Ivy Lee Pickett, Adm. for
Reuben B. Pickett, deceased
Algier Pitre, Sr.
Sadie Mae Pitre
Sadie Mae Pitre, Adm.
for Marks Pitre, deceased
Bibian Poche
Oza Posey
Raymond Delaine Posey
Patrick Paul Powers
Gladys Gail Prejean, Adm.
for Nailes Prejean, deceased
Gladys Gail Prejean
John Prescott
Albert Joseph Prosperie, Jr.
Anora H. Proudhomme
Anora H. Proudhomme, Adm.
for James Proudhomme, deceased
Howard Pruett
Ruby M. Pruett
Ruby Randle
Ruby Randle, Adm. for
Gus Randle, deceased
Eloile Read

Wesley Ansel Read
Jay Reed, Sr.
Mary B. Reed
Albert P. Reese
Eli Reese
Everett L. Reese
Marian D. Reese
Othella Reese
Willie V. Rhode
Willie V. Rhode, Adm.
for Otto V. Rhode, deceased
Harry Lloyd Rhodes
Lucille Rhodes
Mayoine A. Rhodes
John M. Richard
Corine W. Richardson
Eula Mae Rizzo
Luke Rizzo
Mary L. Robberts
Mary Sue Robberts, Adm. for
John T. Robberts, deceased
Mary Sue Robberts
Ronald G. Robberts
Clark Lewis Robbs
Velma Robbs
Dorothy B. Roberts
Edwin Allen Roberts
Betty Rogers
Lige Glean Rogers
George Romero
Janine Romero, Adm. for
Simonet Romero, deceased
Joyce Romero
Josephine Ross
Walter Anthony Ross
James Runte
Joyce K. Runte
John O. Sampson

Marvin Carol Sanders
Ola A. Sanders
Dannie Mae Saunders, Adm. for
Elbert W. Saunders, deceased
Franklin L. Scales
Jackie Schell
Rodney Vernon Schell
Glynn Schildknecht
Ella Schroeder
Ella Schroeder, Adm. for
Herbert Schroeder, deceased
James A. Scott
Phoebe Scott
Dorothy Self
William Dave Self
Max Shaw
Hugh Lavell Simmons
Jessie M. Simmons
Rebecca Sinegal
Rebecca Sinegal, Adm.
for Morris Sinegal, deceased
Evelyn M. Skinner
Virgil Lee Skinner
Delores V. Smith
Fred Douglas Smith
Herbert H. Smith
Jimmie C. Smith
Leo Earl Smith
Miriam C. Smith
Mary Ellen Sosa
Louvean Sparks, Adm. for
Edwin Sparks, deceased
Louveen Sparks
Audrey M. Standley
Juanita B. Standley
Paul Ray Standley
Thomas Howard Standley

Carl Stanley
Emogene Stanley
Garland Stanley
Lloyd Stanley
Mattie Stanley
Vera Stanley
Alfred Stelly
Marion Stiles
Mary Stiles
Anita Strange
William Charley Strange
Billie Tallarita
Labo Tallarita
L.D. Tarver
Mildred Tarver
Atwood Reid Taylor
Edna Taylor
Joseph E. Theriot
Mary Theriot
Katherine Thibault
Lester James Thibault
Dennis C. Thomas, Jr.
Lola Grace Thomas
Mary Thomas
Willie Thomas
Claude Thompson
Earl Dean Thompson
Jo Ann Thompson
Glen Ernest Thorn
June Thorn
Kizzie Timmons
Norris Timmons
Helen Tolivar
James Tolivar, Sr.
Elza Joseph Touchet
Leander Touchet
Lela Touchet
Lilly Touchet

Ethel Dugas Toups
Ethel Dugas Toups, Adm. for
Alton Toups, deceased
John A. Trahan
Laura Trahan
Calvin James Trosclair
Miriam Trosclair
Francis Raymond Tuory
Calvin Turner
Mary Jane Vandygriff
Mary Jane Vandygriff, Adm. for
Shelah Vandygriff, deceased
Jessie Vanwright
L.C. Vanwright
A.C. Vaughan, Jr.
Elizabeth N. Vaughan
Catalina Villareal
Luciano Luis Villareal
Charles Emery Waddell
Frances Waddell
Homer Waddell
Trilby Waddell
Lucy Walker
Verna Mae Calcote Wallace
Mary Walles
Reed Walles
Bell Thomas Walters, Adm. for
Steve Walters, deceased
Bell Thomas Walters
Dawn Wilbur Warner
Patricia Warner
Betty K. Webb
Robert Mathew Webb
Martin L. Welch
Gervis T. Weldon
John Wells
A.C. White
Gloria White

Samuel M. Wilburn
Emery C. Wilkerson
Mary Willey
Charlie Williams
Cynthia Ramona Williams
Estoline Williams
James Franklin Williams
Joseph H. Williams, Jr.
Mary Williams
Steve Williams, Jr.
Thelma G. Williams
Tillman A. Williams
Betty Jean Williamson, Adm. for
William Williamson, deceased
Betty Jean Williamson
Charles R. Willingham
Carolyn M. Wilson
Raymond A. Wilson
Edgar Raymond Windsor
Sallie J. Windsor
Martin Wishard
Nora Wishard
Thelma Yoast, Adm. for
Samuel J. Yoast, deceased
Thelma A. Yoast

APPENDIX B

Respondents

Best Insurors, Inc.
Best Insurors of Mississippi, Inc.
Coast to Coast Advertising, Inc.
Computer Holdings Corporation
Dixie Building Supplies, Inc.
Hamer Holdings Corporation
Hamer Properties, Inc.
Homes Holdings Corporation
Jim Walter Computer Services, Inc.
Jim Walter Homes, Inc.
Jim Walter Insurance Services, Inc.
Jim Walter Resources, Inc.
Jim Walter Window Components, Inc.
JW Aluminum Company
JW Resources, Inc.
JW Resources Holdings Corporation
J.W.I. Holdings Corporation
J.W. Walter, Inc.
JW Window Components, Inc.
Land Holdings Corporation
Mid-State Homes, Inc.
Mid-State Holdings Corporation
Railroad Holdings Corporation
Sloss Industries Corporation
Southern Precision Corporation
United Land Corporation
United States Pipe and Foundry Company
U.S. Pipe Realty, Inc.
Vestal Manufacturing Company
Walter Home Improvement, Inc.
Walter Industries, Inc. (formerly Hillsborough Holdings Corporation)
Walter Land Company

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 90-163-MISC-T-15

IN RE:
HILLSBOROUGH HOLDINGS CORPORATION et al.,
Plaintiffs,

v.

THE CELOTEX CORPORATION, et al.,
Defendants.

O R D E R

Before the Court is the "Asbestos Defendants" motion to withdraw reference of Bankruptcy Adversary Proceeding No. 90-0003. (D-11) In the adversary proceeding, the Debtors seek a declaration that the corporate veil between Jim Walter Corporation (JWC) and Celotex may not be pierced to make JWC liable for any successful asbestos-related personal injury claims, as well as a declaration that the transaction in which Walter Industries exchanged shares for assets of JWC was not a fraudulent conveyance. These claims mirror the claims in an action filed by the Asbestos Defendants in Texas state court in 1989.

The Court has already found that the issues involved in this adversary proceeding are "core" proceedings pursuant to 28 U.S.C. §157(b)(2). (D-43) However, the Court deferred ruling on the present motion until the Bankruptcy Court ruled on a pending summary judgment motion. The Bankruptcy Court recently denied the summary judgment motion and is ready to set this matter for trial, pending this Court's ruling on the motion to withdraw reference.

Section 157(d) of Title 28 of the United States Code provides in part that "The district court may withdraw, in whole or in part, any case or proceeding referred under this section on its own motion or on timely motion of any party, for cause shown." The cause upon which the Asbestos Defendants base their motion for withdrawal of reference is their claim that they are entitled to a jury trial. In order to accept their argument, the Court must find both that the Bankruptcy Court does not have the authority to conduct jury trials, and that the Asbestos Defendants are entitled to a jury trial.

Circuit Courts of Appeal are in disagreement as to whether the Bankruptcy Courts can conduct jury trials. *In the Matter of Grabill Corp.*, 967 F.2d 1152, 1153 (7th Cir. 1992) (Jury trials in Bankruptcy Court permissible in 2d Circuit but not in 6th, 7th, or 8th Circuits.) The Eleventh Circuit has not announced a ruling on this issue. Nor has the Supreme Court offered guidance on the subject, aside from holding that a bankruptcy filing cannot be used to deprive parties of their 7th Amendment right to jury trial. *Granfinanciera, S.A. v. Nordbert*, 492 U.S. 33, 50 (1989).

Fortunately, this Court need not second guess the Eleventh Circuit because the Court finds that Asbestos Defendants are not entitled to a jury trial on the issues presented in the adversarial proceeding. The two basic issues in the adversary proceeding are first, whether the corporate veil which separated JWC and its subsidiary, Celotex can be pierced and second, whether the transfer of assets, via a leveraged buyout, between Walter Industries and JWC was a fraudulent conveyance.

In order to determine whether the above issues preserve the Asbestos Defendants right to jury trial the Court must first compare the present action to 18th Century actions available in English courts when courts of law and equity were still separate. *Granfinanciera*, at 42. The second, and

more important step is to determine whether the remedy sought is legal or equitable in nature. *Id.*

Applying the analysis set forth in *Granfinanciera* to the present case, the Court first finds that although actions to pierce the corporate veil may currently be brought in courts of law, they were historically brought in courts of equity. *See e.g. Bangor Punta Operations, Inc. v. Bangor & Aroostook R.R. Co.*, 417 U.S. 703, 713 (1974). Furthermore, the actual remedy sought, a determination to ignore a legal fiction and find that the assets of the parent are the assets of the subsidiary, is at its essence an equitable remedy. *American Protein Corp. v. AB Volvo*, 844 F.2d 56, 59 (2d. Cir. 1988).

As for the fraudulent conveyance action, the Supreme Court has stated such actions seeking monetary relief could historically be brought in courts of law. *Granfinanciera*, at 43. However, the Court distinguished fraudulent conveyance actions seeking monetary relief from those seeking other equitable remedies, such as those the Asbestos defendants seek here. *Id.* at 43-46. Basically, the Asbestos Defendants seek the return of intangible assets, stock, from one corporation to another. That remedy is clearly equitable in nature. *Granfinanciera*, at 44 (citing G. Glenn, Fraudulent Conveyances and Preferences §98, pp 183-84 (rev. ed. 1940).

In sum, the Court finds that the although the Asbestos Defendants could have their claims heard by a jury, they are not constitutionally entitled to a jury trial on those claims.

Accordingly, it is ORDERED:

The Asbestos Defendants motion to withdraw reference (D-11) is DENIED.

DONE AND ORDERED at Tampa, Florida this 15th day of September, 1992.

/s/ Ralph W. Nimmons, Jr.
RALPH W. NIMMONS, JR.
UNITED STATES DISTRICT JUDGE

Copies to
Counsel of Record

APPENDIX D

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Chapter 11
Case No. 89-9715-8P1 through 89-9746-8P1
and 90-11997-8P1

In re:

HILLSBOROUGH HOLDINGS CORPORATION, et al.,
Debtors.

Adv. No. 90-0003 and 90-0004

In re:

HILLSBOROUGH HOLDINGS CORPORATION, et al.,
Plaintiffs,

vs.

THE CELOTEX CORPORATION, et al.,
Defendants.

ORDER STRIKING ASBESTOS CLAIMANTS' DEMAND FOR JURY TRIAL ON VEIL PIERCING CLAIM

THIS CAUSE came on for consideration upon Debtors' Motion for an Order Striking Asbestos Claimants' Demand for Jury Trial on the Veil Piercing Claim (the "Motion"). Subsequent to the filing of this Motion, an Order was entered on September 15, 1992, by United States District Judge Ralph W. Nimmons, Jr., denying the Asbestos Defendants' Motion to Withdraw Reference. The Order

recites the issues involved in the above-styled adversary proceeding and determines that the Asbestos Defendants are not constitutionally entitled to a jury trial on their claims. The Court finds that said Order is dispositive of the issues raised in Debtors' Motion and that no further hearing is necessary. It is therefore

ORDERED, ADJUDGED and DECREED that the Debtors' Motion for an Order Striking Asbestos Claimants' Demand for Jury Trial on the Veil Piercing Claim be, and the same is hereby, granted.

DONE AND ORDERED at Tampa, Florida, on Oct. 7, 1992.

/s/ Alexander L. Paskay
ALEXANDER L. PASKAY
Chief Bankruptcy Judge

APPENDIX E

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 90-163-MISC-T-15

IN RE:

HILLSBOROUGH HOLDINGS CORPORATION et al.,
Plaintiffs,

v.

THE CELOTEX CORPORATION, et al.,
Defendants.

O R D E R

Before the Court is the "Asbestos Defendants" Motion for Reconsideration or in the Alternative for Certification of Interlocutory Appeal oi Order Denying the Motion to Withdraw Reference. (D-70) Upon review of that motion and of the Debtors' response (D-71) the Court declines to reconsider the defendants motion to withdraw reference.

Nor does the Court find that the issue raised by the Asbestos defendants, that is whether they are entitled to a jury trial in the bankruptcy adversary proceeding, is a controlling question of law as to which there is substantial ground for difference of opinion.

Accordingly, it is ORDERED:

The Asbestos Defendants motion for reconsideration or in the alternative for certification of interlocutory appeal (D-70) is DENIED.

DONE AND ORDERED at Tampa, Florida this 23rd day of February, 1993.

/s/ Ralph W. Nimmons, Jr.
RALPH W. NIMMONS, JR.
UNITED STATES DISTRICT JUDGE

Copies to
Counsel of Record

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 93-2219

IN RE:

ASBESTOS VICTIMS,

Petitioners.

On Petition for Writ of Mandamus to the United States District Court for the Middle District of Florida

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BEFORE: TJOFLAT, Chief Judge, FAY and BLACK, Circuit Judges.

BY THE COURT:

The petition for writ of mandamus is denied.

STAMPED:

FILED

US COURT OF APPEALS
ELEVENTH CIRCUIT
APR 19 1993
MIGUEL J. CORTEZ
CLERK